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merits were not challenged by counsel for the respondent before the Judge in Chambers or before us, as indeed they could not possibly be in second appeal, and are final and conclusive between the parties.

TEK CHAND J.

The result, therefore, is that this appeal must be accepted, the decrees of the Courts below reversed and the plaintiff's suit decreed with costs throughout.

MONROE J.

MONROE J.—I agree.

A. N. C.

Appeal accepted.

LETTERS PATENT APPEAL.

Before Tek Chand and Abdul Rashid JJ.

KANSHI RAM AND ANOTHER (PLAINTIFFS) Appellants

versus

SITU AND ANOTHER (DEFENDANTS) Respondents.

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May 18.

Letters Patent Appeal No. 35 of 1931.

Custom—Succession—"Adopted" son—whether succeeds to a share in natural brother's estate—in presence of another natural brother—Riwaj-i-am—*Kangra District.*

T, the father of the defendants-respondents was "adopted" by his paternal uncle and under the Customary Law succeeded to his property, but was excluded from a share in the estate of his natural father by his brothers D and G. D died childless and his estate devolved on his widow for life. On the death of the widow the question arose whether G and T would succeed equally to the land of D, or whether G would exclude T.

Held, that under the Customary Law, T would be excluded by G on the principle that an heir appointed under the Customary Law does not, in the presence of a natural brother, succeed to the property of his natural father, though he does not lose his right to succeed to his collaterals.

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Gholam Muhammad v. *Muhammad Bakhsh* (1), *Sita Ram* v. *Raja Ram* (2), and L. P. A. No. 75 of 1923 (unpublished), relied on.

Paragraph 48 of Rattigan's Customary Law and *Riwaj-i-am*, Kangra District, question 77, referred to.

Case-law discussed.

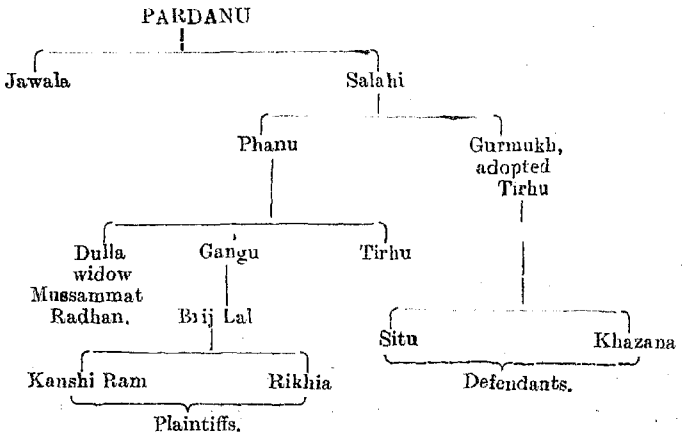
Letters Patent Appeal from the decree passed by Dalip Singh J. in C. A. No. 2175 of 1930 on the 14th April, 1931, reversing that of R. B. Lala *Rangi Lal, District Judge, Hoshiarpur, dated the 7th August, 1930, who affirmed that of* Lala *Manohar Lal Vij, Subordinate Judge, 4th Class, Kangra, dated the 14th February, 1930, dismissing the plaintiffs' suit.*

QABUL CHAND, for Appellants.

M. C. MAHAJAN and R. C. SONI, for Respondents.

ABDUL RASHID J.

ABDUL RASHID J.—The following pedigree-table will be helpful in understanding the facts of this case :—



Tirhu was adopted by his uncle Gurmukh, and it is common ground that this adoption was the customary appointment of an heir. Tirhu succeeded

(1) 4 P. R. 1891 (F. B.). (2) 12 P. R. 1892 (F. B.).

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to the property of Gurmukh, but was excluded from a share in the estate of his natural father Phanu by his brothers Dulla and Gangu. Dulla died without leaving any issue and his land passed on to his widow *Mussammat* Radhan for her lifetime. On the death of *Mussammat* Radhan one-half of the land of Dulla was mutated in the name of Kanshi Ram and Rikhia, plaintiffs, sons of Brij Lal, while the other half was shown in the revenue records as the property of Tirhu. Tirhu died shortly afterwards, and, thereupon, the plaintiffs instituted the present suit for possession of 22 *kanals*, 18 *marlas* of land against Situ and Khazana, sons of Tirhu, on the ground that Tirhu having been adopted by Gurmukh was not entitled to succeed in the family of his natural father and that the entire estate of Dulla ought to have been mutated in their names. The trial Court decreed the plaintiffs' claim, and on appeal the learned District Judge affirmed the decision of the Court of first instance. The defendants appealed to this Court, and the learned Judge in Chambers accepted the appeal and dismissed the plaintiffs' suit. The plaintiffs, thereupon, preferred the present appeal under clause 10 of the Letters Patent.

The only question for determination in this appeal is, whether an adopted son succeeds to the estate of his natural brother, who dies without leaving any issue, when the descendants of another brother are living. It was contended on behalf of the appellants that under the Customary Law the property of a man who dies without issue first reverts to the ancestor, who left an issue, and then descends to the male lineal descendants of that ancestor. It was urged that in the present case Dulla having died

without leaving any issue his property reverted to Phanu on the death of *Mussammat* Radhan, and then descended to Gangu as the son of Phanu and not as the brother of Dulla. Tirhu having been adopted by Gurmukh could not succeed to the estate of Phanu, and, therefore, the entire property of Dulla which had reverted to Phanu descended to the plaintiffs who were the only descendants of Gangu. Reliance was placed on *Sita Ram* v. *Raja Ram* (1), *Gholam Muhammad* v. *Muhammad Bakhsh* (2) and *Mamun* v. *Mst. Jowai* (3) in this connection. It was observed in *Sita Ram* v. *Raja Ram* (1), that " the general principle which regulates succession to ancestral land in a Punjab village community is fully explained in the Full Bench case *Gholam Muhammad* v. *Muhammad Bakhsh* (2). It is there shown that the property of a man who dies without issue first reverts to the ancestor and then descends to the male lineal descendants of that ancestor. Thus a brother succeeds a sonless brother not as a brother, but because the estate reverts to the father and descends again to his sons. So too a mother succeeds not as a mother but as the widow of the father to whom the estate has ascended. This also explains what is called ' the principle of representation.' Applying this rule to the case of adopted sons or donees who have left no lineal heirs, it is clear that the estate would be treated as ascending to the person from whom the adopted son or donee derived his title : if, as would almost invariably be the case, that person left no male lineal descendants, the estate would ascend still higher in his line until an ancestor was found, who had held the estate and had left descendants. I think that there can be

(1) 12 P. R. 1892 (F. B.). (2) 4 P. R. 1891 (F. B.).
(3) (1927) I. L. R. 8 Lah. 139.

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no doubt that the principle laid down in *Gholam Muhammad* v. *Muhammad Bakhsh* (1), is the true principle of succession, and under it the persons called, in the cases before us, the collaterals of the donor or adopter have an undoubted right to succeed in preference to the collaterals of the donee, or an adopted son, who have really no right of succession at all."

It was observed by Sir Meredyth Plowden in *Gholam Muhammad* v. *Muhammad Bakhsh* (1), that " if we bear in mind that the absolute right of sons to a share in the estate of the father is (probably) based upon his having received it from (or through) *his* father, and that the portion of a descendant deceased without issue is regarded as reverting to the deceased's ancestor and then descending from him to his male lineal descendants then living, we have, I think, an explanation of the claims of *ekjaddian* and of the expression *warrisan ekjaddi*. According to the view that the property of the man, who dies without issue, first reverts to the ancestor and then descends, it will be seen that the ancestral property devolves upon the male lineal descendants of the common ancestor of the deceased and his heirs, in cases of what is called collateral succession, as well as in cases of what is called lineal succession. It must be further remembered that every descendant who leaves issue becomes, in his turn, an ancestor *qua* the particular portion which forms his own inherited estate."

It was strenuously urged that in view of the principle of Customary Law enunciated above the land in dispute must be regarded as the property of Phanu, and that, therefore, the real question for determination was whether Tirhu was entitled to

(1) 4 P. R. 1891 (F. B.).

succeed to the estate of Phanu. After the death of *Mussammat* Radhan the land in dispute could not be regarded as the property of Dulla, and Gangu would succeed to it exclusively as the son of Phanu and not as the brother of Dulla. It seems to be well-established that an adopted son is not entitled to succeed to his share in his natural father's property, in the presence of his natural brothers. Reference may be made in this connection to *Mukh Ram* v. *Not Ram* (1) and *Dewa Singh* v. *Lehna Singh* (2). In these circumstances, if the property in dispute is to be regarded as the estate of Phanu it must be held that Gangu alone was entitled to succeed to it to the exclusion of Tirhu, the father of the defendants.

The Customary Law of the Kangra District has also been relied upon by the learned District Judge in support of the claim of the plaintiffs. Question 77 of the Customary Law runs as follows:—

"*Question 77*—Is an adopted son entitled to succeed to his natural father in case of the latter having no other lineal issue?

Answer—Except the *Gosains* of Kangra and the *Gaddis* and *Kanets* of Palampur *Tahsil* all the tribes say the adopted son is not entitled to succeed to his natural father."

It is clear that the Question and the Answer refer to the case of a father whose only son had been adopted by some other person. It is laid down that under these circumstances the adopted son cannot succeed to the property of his natural father. In the present case Phanu had three sons and the provisions in the Customary Law are not, therefore, specifically ap-

(1) 100 P. R. 1906. (2) 45 P. R. 1916.

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plicable. It was, however, contended that the provisions of the Customary Law of the Kangra District support the plaintiffs' claim as the natural son would in such cases be excluded even by the collaterals of the natural father. The learned counsel for the appellants, however, placed reliance chiefly on para. 48 of Rattigan's *Digest of Customary Law* which lays down that an heir appointed under the Customary Law ordinarily does not thereby lose his right to succeed to property in his natural family as against collaterals, but does not succeed against his natural brothers. It was urged that in accordance with the provisions of this para. Gangu would be entitled to inherit the estate of Phanu to the exclusion of Tirhu, and that owing to Dulla having died issueless the land in dispute must be regarded as the estate of Phanu. It was contended that Tirhu may be entitled to succeed to the collaterals of his natural father together with Gangu, but that as far as the estate of his natural father was concerned Gangu had a preferential right to succeed. Reference was also made in this connection to *Jugat Singh* v. *Ishar Singh* (1), where it was held that a person appointed an heir under the Customary Law of the Punjab is not debarred from succeeding collaterally in his natural family in the presence of his natural brothers although he cannot compete with them in the matter of succession to the estate of his natural father. In *Khushi Ram* v. *Mangal Singh* (2), it was laid down that among the *Dhilwan Jats* of the Ludhiana District no special custom had been proved entitling a nominated heir to succeed collaterally in the family of his adoptive father. It appears that as the adopted son cannot succeed collaterally in the family of his adoptive

(1) (1930) I. L. R. 11 Lah. 615. (2) (1927) I. L. R. 8 Lah. 46.

father he is allowed to succeed collaterally in the family of his natural father.

On behalf of the respondents it was strenuously urged by Mr. Mehr Chand Mahajan, that a person who is appointed an heir under the Customary Law is in the same position as a legatee who has accepted a legacy from a stranger. It was maintained that the general rule is that the appointed heir retains all his rights in the natural family, and that there is only one exception to this general rule which is to the effect that on the death of his natural father an adopted son is excluded by his natural brothers from inheritance. This exception, according to the learned counsel, has been recognised by the Customary Law on the score of equity in order to equalize the shares of the different brothers. It was urged that this exception became operative only on the death of the natural father, and that the scope of this exception could not be extended so as to make it applicable to cases where succession opened out subsequent to the death of the natural father. It was suggested that the present case really involved a question of collateral succession and that Tirhu would succeed collaterally to his brother Dulla on the death of his (Dulla's) widow *Mussammat* Radhan. It was also urged that the appointment of an heir under the Customary Law is akin to the *kritrima* form of adoption under the Hindu Law and that it was held in *Majja Singh* v. *Ram Singh* (1), that " under the looser or *kritrima* form of adoption, to which the Punjab custom seems most akin, as there is no limit to age and no condition as to performance of ceremonies, and an only son may be adopted by this form, the person adopted

(1) 43 P. R. 1879.

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continues to be considered a member of his natural family, and takes both the inheritance of his own family and that of his adoptive father." Reliance was also placed in this connection on *Diwan Singh* v. *Bhup Singh* (1), *Narain Singh* v. *Radha* (2), *Dasaundhi* v. *Chanda Singh* (3) and *Mela Singh* v. *Gurdas* (4). It was held in *Mela Singh* v. *Gurdas* (4), that the relationship established between the appointed heir and the appointer is purely a personal one and resembles the *kritrima* form of adoption under Hindu Law, and that such an appointment only affects the parties thereto and the appointed heir does not become the grandson of the appointer's father and his son does not become the grandson of the appointer. *Dasaundhi* v. *Chanda Singh* (3), lays down that the ordinary rule among the agricultural tribes in the Punjab is, that a person who is appointed as an heir to a third person does not thereby lose his right to succeed to the property of his natural father and that a corollary to this general rule is, that among many tribes it is recognised that the appointed heir and his lineal descendants have no right to succeed to any share in the family of his natural father as against other sons (and their descendants) of the latter.

All the rulings quoted on behalf of the respondents, however, do not in any way deal with the question whether in the present case the land in dispute is to be regarded as the estate of Dulla or that of his father Phanu. Reliance was also placed on behalf of the respondents on a ruling by Moti Sagar J. in *Ishar* v. *Hukam Singh* (5). The decision in that case was,

(1) 45 P. R. 1884.
(2) 42 P. R. 1886.
(3) 45 P. R. 1912.
(4) (1922) I. L. R. 3 Lah. 362 (F. B.).
(5) 1923 A. I. R. (Lah.) 485.

however, reversed by the Letters Patent Bench on appeal (L. P. A. No. 75 of 1923) where it was held that the descendants of an adopted son had no right to succeed to a share in the estate of his natural father's family as against the descendants of his natural brothers.

The learned counsel for the respondents contended that, on the line of Dulla becoming extinct, we have to refer to his father Phanu merely to discover the heirs of Dulla, and that the finding of an heir does not make the property in dispute the estate of Phanu, and that, therefore the observations in *Sita Ram* v. *Raja Ram* (1) and *Gholam Muhammad* v. *Muhammad Bakhsh* (2), do not help the appellants. It must, however, be remembered that the above-mentioned rulings definitely lay down that the property of a person who dies issueless first reverts to the ancestor who left an issue and then descends to his lineal descendants. In my judgment, therefore, the property in dispute must, in the present case be regarded as the estate of Phanu and not that of Dulla. If this be so it is clear that in accordance with the rule laid down in para. 48 of Rattigan's *Digest of Customary Law*, Tirhu would be excluded by Gangu, the grandfather of the plaintiffs regarding succession to the estate of Phanu.

For the foregoing reasons I would accept the appeal, set aside the judgment and decree of the learned Judge in Chambers, and restore that of the learned District Judge. As the point involved in the case was not free from difficulty I would leave the parties to bear their own costs throughout.

(1) 12 P. R. 1892 (F. B.). (2) 4 P. R. 1891 (F. B.).

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TEK CHAND J.—I concur in the conclusion reached by my learned brother. So far as I am aware, the only published case, in which the question now before us arose directly, is *Ishar* v. *Hukam Singh* (1) decided by Moti Sagar J. sitting in Single Bench. This decision certainly supports the respondents, and appears to have largely influenced the learned Judge in Chambers in accepting the view put forward by the respondents. The judgment of Moti Sagar J. in that case, however, was set aside on appeal by the Letters Patent Bench (Shadi Lal C. J. and leRossignol J.) in L. P. A. 75 of 1923, decided on the 3rd of April, 1924. It is unfortunate that the appellate judgment has not been published in any of the reports, and for this reason it was not brought to the notice of the learned Judge in Chambers. The Letters Patent Bench held in that case that where by custom a person, who has been " adopted " by one of his uncles, is excluded by his natural brothers from participating in the inheritance of his natural father, such person or his descendants cannot, on the line of one of his natural brothers becoming extinct, succeed to the latter's share in the estate in the presence of his other natural brothers. In such cases the property, which had descended from the natural father to his sons, other than the one who has been " adopted " elsewhere, is on one of such sons dying childless, treated as that of the natural father and follows the same course of devolution as it would have done on the death of the natural father.

Mr. Mehr Chand has attacked the soundness of this view, but after hearing him at length, I find myself unable to accept his contention. The decision of

(1) 1933 A. I. R. (Lah.) 485.

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the Letters Patent Bench is in accord with the principles of succession to ancestral property of a childless proprietor belonging to agricultural communities in the Punjab, as enunciated in the Full Bench judgments in *Gujar* v. *Sham Das* (1), *Gholam Muhammad* v. *Muhammad Bakhsh* (2) and *Sita Ram* v. *Raja Ram* (3), which have since been followed in numerous cases by the Chief Court and this Court. It is no doubt true that the customary appointment of an heir merely creates a personal relationship between the appointer and the appointee. Unlike a person adopted in the *Dattaka* form of Hindu Law, the customary "adopted" son is not transplanted into the family of the "adopter." He does not acquire any right of collateral succession in the latter family, nor does he lose the right to succeed to the collaterals of his natural father. On the one hand, he succeeds to the property of the "adopter;" while on the other, the general rule is that in succession to the estate of his natural father he is excluded by his natural brothers. It is conceded, that on these points the custom prevailing in the tribe of the parties is in accordance with the general rules stated above, as is indeed established beyond dispute by the fact that Tirhu got the entire property of his "adoptive" father Gurmukh, but was excluded by his brothers, Gangu and Dulla, from succession to their natural father Phanu. It is admitted that on Phanu's death his property was divided equally between Dulla and Gangu, to the exclusion of Tirhu. Dulla's line having now become extinct his share, according to the cardinal rules governing succession to ancestral property among the agricultural tribes of the Punjab, reverts to Phanu and as such must devolve exclusively on Gangu's descendants.

(1) 107 P. R. 1887 (F. B.). (2) 4 P. R. 1891 (F. B.).
(3) 12 P. R. 1892 (F. B.).

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Mr. Mehr Chand drew our attention to certain remarks in some reported judgments, where the customary appointment of an heir is described as resembling the *kritrima* form of adoption under the Hindu Law, and argued that as a *kritrima* son does not lose his right to succeed to his natural father or brothers, the same rule should be held applicable to persons who are " appointed heirs " under the Punjab Customary Law. This argument, however, is entirely fallacious, and appears to be based on a misconception of the real nature and incidents of the *kritrima* adoption. This form of adoption prevails generally in Bihar and the adjoining country, and possesses some very peculiar features which are entirely absent in the customary appointment of an heir in the Punjab. For instance, it is necessary for the validity of a *kritrima* adoption that the adopted son must consent to his adoption—the essential ceremony consisting of a statement by the adopter " Be thou my son " and the reply by the adoptee " I will become your son." It is hardly necessary to point out that the consent of the appointee is not at all required under Punjab custom. Again, in *kritrima* adoptions there is no bar to the adoption of a daughter's son or sister's son, but in the Punjab (unless a special custom to the contrary is proved) the daughter's son or sister's son cannot be " adopted." Another peculiar feature of *kritrima* adoptions is that a wife can adopt a son to *herself*, even though the husband has already adopted a son to *himself*. Such double adoptions are, of course, entirely unknown in the Punjab. There are several other points of dissimilarity, but it does not appear necessary to discuss them here. It will be sufficient to say that the two systems are fundamentally different, and while there are some points of resem-

blance, all the incidents of one cannot be imported by analogy into the other. In this connection reference may be made to *Mussammat Rukmani* v. *Mussammat Salukhni* (1), where Plowden S. J. observed that it was doubtful "whether the *kritrima* form prevails or even has prevailed in the Punjab generally." Similarly in *Sohnun* v. *Ram Dial* (2), Chatterji J. remarked that it was difficult merely on the ground of "certain similarities between *kritrima* adoptions and customary adoptions in this province to say that they are identical. The similarities do not extend beyond certain points. The fiction of affiliation does not exist in *kritrima* adoptions nor the restrictions that apply to the *Dattaka* form regarding the person to be adopted. Nor are any particular religious ceremonies necessary in them. These features are found in customary adoptions generally, but when this is said, the points of resemblance are practically exhausted."

In my opinion this appeal must succeed and the judgment of the District Judge decreeing the plaintiffs' suit restored, the parties being left to bear their own costs throughout.

A. N. C.

Appeal accepted.

(1) 147 P. R. 1889. (2) 79 P. R. 1901, p. 257.